

TITLE XXVI


ACTIONS FOR ADMINISTRATIVE COSTS

RULE 270. GENERAL

(a) Applicability: The Rules of this Title XXVI set forth the special provisions which apply to actions for administrative costs under Code Section 7430(f)(2). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for administrative costs.

(b) Definitions: As used in the Rules in this Title--

(1) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(2) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney) admitted to  practice before the Court or authorized to practice before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(3) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of an action for administrative costs under this Title unless the following conditions are satisfied:

(1) The Commissioner has made a decision denying (in whole or in part) an award for reasonable administrative costs under Code Section 7430(a).

(2) A petition for an award for reasonable administrative costs is filed with the Court.

¹**(d) Burden of Proof:** For the rules regarding the burden of proof in claims for administrative costs, see Rule 232(e).

¹New paragraph (d) is effective as of August 1, 1998.

RULE 271. COMMENCEMENT OF ACTION FOR ADMINISTRATIVE COSTS

(a) Commencement of Action: An action for an award for reasonable administrative costs under Code Section 7430(f)(2) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, relating to the form of pleadings.

¹**(b) Content of Petition:** A petition filed pursuant to this Rule shall be entitled "Petition for Administrative Costs (Sec 7430(f)(2))". Such a petition shall be substantially in accordance with Form 13 shown in Appendix I, or shall, in the alternative, contain the following:

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number). The mailing address, legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the decision denying an award for administrative costs in respect of which the petition is filed, and the City and State of the office of the Internal Revenue Service which issued the decision.

(3) The amount of administrative costs claimed by the petitioner in the administrative proceeding; the amount of administrative costs denied by the Commissioner; and, if different from the amount denied, the amount of administrative costs now claimed by the petitioner.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to establish that, in the administrative proceeding, the petitioner substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented in the administrative proceeding.

(5) A statement that the petitioner meets the net worth requirements of Section 2412(d)(2)(B) of Title 28, United States Code (as in effect on October 22, 1986).

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) A copy of the decision denying (in whole or in part) an award for reasonable administrative costs in respect of which the petition is filed.

(c) Filing Fee: The fee for filing a petition for administrative costs shall be \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that the petitioner is unable to make such payment.

¹The amendments are effective for actions for administrative costs commenced with respect to proceedings commenced after July 30, 1996, except that the amendment reflecting the renumbering of former Form 16 is effective as of August 1, 1998.

RULE 272. OTHER PLEADINGS

(a) Answer: (1) *In General:* The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

¹(2) *Additional Requirement for Answer:* In addition to the specific admission or denial of each material allegation in the petition, the answer shall contain the following:

(A) Clear and concise lettered statements of the facts on which the Commissioner relies to establish that, in the administrative proceeding, the Commissioner's position was substantially justified;

(B) A statement whether the Commissioner agrees that the petitioner substantially prevailed in the administrative proceeding with respect to either the amount in controversy or the most significant issue or set of issues presented in the administrative proceeding;

(C) A statement whether the Commissioner agrees that the amount of administrative costs claimed by the petitioner is reasonable;

(D) A statement whether the Commissioner agrees that the petitioner meets the net worth requirements as provided by law; and

(E) The basis for the Commissioner's disagreement with any such allegations by the petitioner.

(3) *Effect of Answer:* Every material allegation set forth in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted. The failure to include in the answer any statement required by subparagraph (2) of this paragraph shall be deemed to constitute a concession by the Commissioner of that matter.

(b) Reply: A reply to the answer shall not be filed in an action for administrative costs unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the material allegations of the answer will be deemed denied.

¹The amendments are effective for actions for administrative costs commenced with respect to proceedings commenced after July 30, 1996.

**RULE 273. JOINDER OF ISSUE IN ACTION FOR
ADMINISTRATIVE COSTS**

An action for administrative costs shall be deemed at issue upon the filing of the answer.

RULE 274. APPLICABLE SMALL TAX CASE RULES

Proceedings in an action for administrative costs shall be governed by the provisions of the following Small Tax Case Rules (see Rule 170) with respect to the matters to which they apply: Rule 174 (representation); Rule 176 (preliminary hearings); Rule 177 (trial); Rule 178 (transcript of proceedings); and Rule 179 (number of copies of papers).